

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Appeal of Decision of the Universal Service)	CC Docket No. 96-45
Administrative Company Regarding Results of)	
2007 Improper Payment Improvement Act (IPIA))	
of the High Cost Program of Thumb Cellular)	Study Area Code 319005
Limited Partnership or, Alternatively, Petition for)	SAC 319005
Declaratory Ruling)	

COMMENTS OF SPRINT NEXTEL CORPORATION

Sprint Nextel Corporation, pursuant to the Public Notice released February 8, 2008 (DA 08-321), hereby respectfully submits its comments on the Appeal/Petition for Declaratory Ruling filed by Thumb Cellular in the above-captioned proceeding. While Sprint Nextel has no comment on the accuracy or auditability of the information provided by Thumb Cellular to the auditor, we do agree that all parties would benefit from Commission clarification and guidance about what constitutes a reasonable request for audit information.

In its Appeal, Thumb Cellular challenges the request of the Universal Service Administrative Company (USAC) that Thumb Cellular update its federal high-cost universal service filings upon threat of “recalculation” of Universal Service Fund (USF) support previously provided. USAC’s request was based on a conclusion by Clifton Gunderson LLP, an independent accountant retained to audit Thumb Cellular’s receipt of USF support, that it (Clifton Gunderson) was “unable to satisfy [itself]” that the line counts reported by Thumb Cellular were correct because Thumb Cellular “could not

provide auditable line counts data/subscriber listings for our examination....”¹ Thumb Cellular asserts (Appeal, p. 3) that it had in fact provided the requested documentation, although not in the electronic format demanded by the auditor.

As an initial matter, Sprint Nextel would emphasize that it fully supports the Commission’s and USAC’s efforts to prevent and detect waste, fraud and abuse in the federal USF programs. Independent audits are a key element in helping to ensure that USF program beneficiaries and service providers are in compliance with statutory requirements and applicable FCC rules. These audits will not fulfill their intended purpose unless auditees meet their obligation to comply with reasonable requests for relevant information. At the same time, however, auditors must avoid unreasonable or excessive demands that go beyond codified regulations and published compliance and document retention standards, and USF program beneficiaries and service providers should not be penalized for inability to comply with any such excessive demands. The Commission, working with USAC, should publicize clear standards that will enable an auditor to assess compliance, but that do not impose an onerous or impossible-to-satisfy burden on the auditee.

The Commission’s rules do not – and should not -- include an exhaustive list of every piece of information that USF program participants must retain, or the format in which relevant information must be stored. For example, Section 54.202(e) of the Commission’s Rules requires recipients of high-cost USF support to:

retain all records required to demonstrate to auditors that the support received was consistent with universal service high-cost program rules. These records should include the following: data supporting line count filings; historical customer records; fixed asset property accounting records; general ledgers;

¹ Independent Accountant’s Report dated March 15, 2007, included as Attachment 1 to Thumb Cellular’s Appeal.

invoice copies for the purchase and maintenance of equipment; maintenance contracts for the upgrade or equipment; and any other relevant documentation. This documentation must be maintained for at least five years from the receipt of funding.

The Commission was correct to adopt a broad rule. It would be impossible to list every piece of information that could possibly be relevant, and short-sighted, given the rate of technological change and the myriad of systems used by USF program participants, to specify the format in which such information should be retained. An auditor should not be forbidden outright from requesting information beyond what is codified, or to request such information in a particular format, since it is possible that in some situations, the auditee may be able or willing to comply with such a request. However, the auditee would be well within its rights to challenge such a request, and the Commission should make clear that the subject will not be penalized (in the form of an unfavorable audit report, demand for repayment of support received, debarment from future participation in the program, etc.) for inability to comply with an unreasonable demand for information, particularly if the auditee made a good faith effort to address the auditor's information needs.²

In Sprint Nextel's experience, it is not uncommon for auditors to request information beyond that which is codified in the Commission's Rules. For example, during compliance (beneficiary and service provider) audits and during the invoice review process, Sprint Nextel has been asked by auditors for the following types of documentation:

² In auditing high-cost USF receipts, the Commission should keep in mind that such funds have in most cases been spent by the ETC on projects contained in service improvement plans approved by the FCC or a state commission. When funds have been spent in a way that the agency with jurisdiction has deemed to be in the public interest, the Commission should be especially cautious about requiring a forfeiture.

- Reconciliation of *current* subscriber billing information and randomly selected, *several year old* bill images to verify historic high-cost line count data reported to USAC (in fact, the relevant comparison should have been between the line count report and the bill images from the same time period);
- Electronic copies of subscriber listing information (Sprint Nextel had offered to provide the auditor with bill images that included the relevant information);
- Confirmation that USAC had “verified” certain of Sprint Nextel’s internal processes for separating out E-rate eligible and ineligible charges (USAC does not engage in such verifications and does not check carriers’ coding of individual rate elements);³
- The front and back of cancelled checks to verify customer payments (because this information is not in Sprint Nextel’s possession, we have offered to provide billing history, which shows date and amount of all payments received, instead);
- Assertion letters referencing Part 32 USOA (Uniform System of Accounts) requirements which apply to incumbent local exchange carriers, and do not apply to CMRS providers like Sprint Nextel.

Authority to adopt rules and to interpret unclear statutes or rules lies with the Commission; USAC is prohibited from performing these functions under Section 54.702 of the Commission’s Rules.⁴ To maximize the effectiveness of USF program audits, while avoiding excessive burdens on program beneficiaries and service providers, Sprint Nextel therefore recommends that the Commission clarify or provide guidance on the following:

- An auditee shall not be penalized for inability or failure to comply with information requests from the auditor that exceed codified requirements or previously publicized compliance standards. This would include all requests for information in a specific format (since the FCC has not codified any formatting requirements). If there is no identifiable rule or FCC policy that allegedly has been violated, the auditor cannot issue a finding of noncompliance in this regard.

³ In this instance, it was our customer and not Sprint Nextel that was being audited, which made the request all the more puzzling.

⁴ Section 54.702 provides that the Administrator of the federal USF:
 ...may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress. Where the Act or the Commission’s rules are unclear, or do not address a particular situation, the Administrator shall seek guidance from the Commission.

- An auditee shall not be penalized for inability to meet compliance standards adopted subsequent to the audit period. For example, in 2007, the Commission adopted a 5-year document retention requirement for high-cost USF records.⁵ Since the Commission adopted the requirement in 2007, parties cannot be expected to have complied with the rule prior to then. Therefore, a party that is audited in 2008 for its participation in the high-cost program in 2004 could not be found “noncompliant” simply because it did not have certain records dating back to 2004. Similarly, any changes to the E-rate eligible services list should apply prospectively only – schools, libraries and service providers should not be subject to a demand for repayment of support received for a service that was eligible in the year the support was received, but which became ineligible in subsequent funding years.
- Disclosure of information that involves either customer proprietary network information (CPNI) or carrier proprietary information to an auditor (whether an FCC employee, a USAC employee, or an employee of an independent auditor retained by either the FCC or USAC), at the auditor’s request, is permissible under the “required by law” exception of Section 222(c)(1) of the Act, and the limited circumstances enumerated in 18 U.S.C. §§ 2702 and 2703.

Finally, Sprint Nextel urges that the Commission make public any “guidance” it provides to USAC regarding implementation, interpretation, and enforcement of federal USF program rules. Transparency in this process (knowledge of what questions USAC has asked, and what answers the Commission has provided) will help all affected parties to understand and comply with the rules, and, in the audit process, will enable program participants to understand both their rights and their responsibilities in responding to information requests.

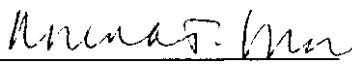
⁵ *Comprehensive Review of the Universal Service Fund Management, Administration and Oversight*, 22 FCC Rcd 16372 (2007).

* * * * *

Prevention and detection of waste, fraud and abuse in the federal universal service programs obviously serve the public interest, and audits serve an important role in achieving these goals. Audits are likely to be more efficient and effective if all parties understand what information auditors may request and what information auditees must provide. Therefore, Sprint Nextel urges the Commission to provide guidance on the audit issues discussed above.

Respectfully submitted,

SPRINT NEXTEL CORPORATION

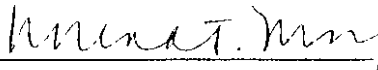


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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing comments of Sprint Nextel Corp. was filed electronically or via US Mail on this 10th day of March 2008 to the parties listed below.


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